

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEBRA S. O'NEAL,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY

COMPANY,

Defendant.

CASE NO. C23-0232-KKE

ORDER

The Court held a pre-trial conference in this matter on October 21, 2024, which this order further memorializes. *See* Dkt. No. 128. The Court ORDERS as follows:

1. To the extent Plaintiff intends to provide additional briefing on damages as it relates to her Motion in Limine #11, she must do so by October 23, 2024, at 5:00 PM.
2. The Parties are directed to meet and confer in an effort to revise the pretrial trial order to resolve evidentiary issues in advance of trial and conform the pretrial order to Local Rule W.D. Wash. LCR 16.1. Specifically, the parties must meet and confer regarding the disputed exhibits identified in the parties' proposed pretrial order and work to resolve objections as to the authenticity and admissibility of potential exhibits to the best of their ability.

- 1 3. The parties are further directed to revise their statement of facts in the pretrial order.  
2 Pursuant to Local Rule W.D. Wash. LCR 16.1, the pretrial order shall “[e]numerate every  
3 agreed fact, irrespective of admissibility, but with notation of objections as to  
4 admissibility.” The pretrial order shall not include disputed facts, nor narrative objections.  
5 Objections shall be as to admissibility only, and shall be made in notation form, consistent  
6 with the notations in the exhibit chart.
- 7 4. The Court further advises the parties that it will not permit the testimony of witnesses who  
8 are not disclosed in the pretrial order absent a showing that the untimely disclosure is  
9 “substantially justified or harmless.” *See* Fed. R. Civ. P. 16(e); *United States v. Lummi*  
10 *Indian Tribe*, 841 F.2d 317, 320–21 (9th Cir. 1988); *Goodman v. Staples The Office*  
11 *Superstore, LLC*, 644 F.3d 817, 826 (9th Cir. 2011). The parties are reminded that pursuant  
12 to LCR 16, “rebuttal” witnesses are limited to those witnesses “the necessity of whose  
13 testimony cannot reasonably be anticipated before trial.” All other witnesses must be  
14 identified in the pretrial order and failure to do so will result in their exclusion. *See, e.g.,*  
15 *Daly v. Far E. Shipping Co. PLC*, 283 F. Supp. 2d 1231, 1238–39 (W.D. Wash. 2003).  
16 The parties shall revise their pretrial order as necessary to list all witnesses whose  
17 testimony can be reasonably anticipated at this time.
- 18 5. The parties should also identify on their witness lists whether any witness will testify via  
19 remote means.
- 20 6. As discussed at the pretrial conference, if one party objects to the testimony of an expert  
21 witness on the ground that it is outside the scope of the expert’s report, the offering party  
22 must be prepared to promptly respond to the objection by identifying with specificity the  
23 location in the expert’s report that discloses the subject testimony. Counsel should  
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1 anticipate such objections and draft their direct examinations accordingly, so that prompt  
2 reference to the expert's report can be provided in the event of an objection.

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4 Dated this 23rd day of October, 2024.

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Kymberly K. Evanson  
8 United States District Judge  
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